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SUBJECT: BONDS, THIEVES AND ARBITRATIONS: A DOMINICAN
REPUBLIC ELECTRICITY SECTOR UPDATE

REF: A. 08 SANTO DOMINGO 1729
[1B.](#) SANTO DOMINGO 183

[¶](#)11. (U) Summary: In what the electricity generators consider a very positive step forward, the Dominican Corporation of State-Owned Electricity Companies (CDEEE) is paying a large part of its outstanding 2008 balance to the generators with USD 250 million in bonds backed by a sovereign guarantee. In addition, the Electricity Superintendence has announced that enforcement of the electricity theft law will begin on February 20. Both of these announcements came against the backdrop of the GoDR-sponsored National Summit, which is discussing ways to address the problematic electricity sector. This cable also contains an update on the three arbitration cases brought by Trust Company of the West (TCW), fifty percent stakeholder of electricity distributor Ede Este, against the GoDR, which owns the other half of the company. End Summary.

Acceptance of CDEEE bond offer pending congressional amendment

[¶](#)12. (U) Facing an outstanding balance of about USD 440 million owed to electricity generators operating in the Dominican Republic (Reftel A), the CDEEE offered to cover USD 250 million of this deficit with sovereign bonds. The dollar bonds, which are in three equal parts set to mature in one, two and three years, have an annual yield of 10.6 percent. In order to ensure that they can easily trade the bonds, the generators have asked the Finance Ministry to request Congress amend its December approval of the bond issue to allow the matured bonds to be used to pay government obligations, including Dominican taxes. On February 10, the generators signed a memorandum of understanding (MOU) that they would accept the bonds if Congress passes this amendment within three months. The bonds continue to mature in the meanwhile in a CDEEE account.

[¶](#)13. (SBU) The major electricity generators greeted the bond offer positively. Compania de Electricidad de San Pedro de Macoris (CESPM) General Manager Roberto Herrera told EconOff that the bonds are a good outcome given that the government has seen revenues drop well below expected levels and appeared to lack other options for payment. He said that CESPM and the other generators recognize the bonds as a good-faith effort to settle the debt. The CDEEE also came up with an additional USD 50 million in cash and has allowed the private generators to forego payments owed to state-owned companies in exchange for reducing CDEEE debts to the generators. Herrera said that given the lower fuel prices, he expects the CDEEE to catch up on the remaining 2008

balance in the coming months. The debt from 2002-04, which was "frozen" and scheduled to be repaid in subsequent years, remains at USD 202 million, according to press reports.

¶14. (SBU) Marco de la Rosa, president of AES Dominicana, told EconOff that AES will receive USD 110 million in bonds, leaving USD 60 million outstanding from 2008. He noted that the MOU signed with the CDEEE includes the state-owned holding company's commitment to pay 2009 invoices on time) a necessity to ensure that the generators have operating capital throughout the year.

Electricity theft crackdown promised for this month

¶15. (U) The Superintendent of Electricity, Francisco Mendez, announced that his office would initiate the formal application of Law 186-07, which criminalizes the theft of electricity, on February 20. Although this law has been part of Dominican criminal code since late 2007, the government has not yet sought to enforce it. In a February 10 press conference to announce the upcoming start date for the law, Mendez noted that the spirit of the law is to dissuade fraud and urged those currently illicitly obtaining electricity to regularize their connection to the grid. Along these lines, the Superintendence took out advertisements in newspapers on February 12 describing the penalties for electricity thieves.

¶16. (U) Numerous analyses of the sector have found that about 25 percent of electricity users in the Dominican Republic

have illegal connections. Illegal users include all sectors of the population, from small residential users to large industrial consumers. This theft is the primary reason that distribution losses in the Dominican Republic are the fourth highest in the world, at close to 40%, and more than double the Latin American average (based on 2005 data).

¶17. (SBU) Federico Valera, Regulations Manager for the state-run Ede Sur distribution company, told EconOff that he believes the February 20 start date is realistic. He said that the National Directorate of Quality Standards and Systems (DIGINOR) has acquired a laboratory that will be used to certify instances of theft. The Attorney General's office has assigned prosecutors to the DIGINOR laboratory for this purpose. Valera noted that part of the delay in implementing the law was logistical, as DIGINOR does not have a budget for this activity. After some wrangling, however, Valera said that the distributors have paid most of the logistical costs and the laboratory is ready to go. He said he believed that Ede Sur has a list of violation allegations (maintained confidential by another section of the company) ready to bring forward as soon as the prosecutors begin working.

National Summit Considers Electricity Conundrum

¶18. (U) Since January 28, various sectors have come together to participate in the government-sponsored "Summit of National Unity to Confront the International Crisis" (Reftel B). While there has been skepticism about whether the meetings will precipitate any action, the "living forces" (as President Fernandez calls the participants in the summit) appear positive about the opportunity to provide input and reach consensuses within the diverse working groups. One of the roundtables is a discussion of Electricity and Hydrocarbons, which has prominently included an examination of the problematic electricity sector.

¶19. (SBU) AES' De la Rosa, a participant in this roundtable, told EconOff that he was pleased with many of the outcomes of the meetings, but noted that the summit's methodological reliance on unanimity and consensus prevented the group from tackling the more challenging items frustrating electricity

reform. "The big problems are those where consensus is lacking," he said, offering as an example the renegotiation of the Madrid Agreement) a series of power purchase agreements (PPAs) signed between generators and the government in 2001. Nonetheless, he said he was pleased that the group reached consensus on a number of issues, such as a reduction of the level of residential consumption to be provided at the lowest tariff. He also mentioned that while the generators were unwilling to agree to renegotiate the Madrid Agreement, they accepted the formation of a legal team to examine the legality of that agreement. He said he believed that President Fernandez was committed to following through the Summit's outcome.

TCW proceeding with arbitrations on three fronts

¶10. (U) On January 28, Econoffs met with EDE Este General Manager Jose Marinas Fernandez and received an update on the TCW arbitration case in a phone call with TCW lawyers. The lawyers provided an update on the status of the three ongoing arbitration cases under the DR-France Bilateral Investment Treaty (BIT), CAFTA-DR, and a concession agreement. In September 2008, the International Chamber of Commerce (ICC) arbitral tribunal found it had jurisdiction over the claim under the DR-France BIT. On January 23, TCW filed a brief on the merits and the DR is expected to respond in May. Under the CAFTA-DR proceedings, the DR has contested jurisdiction and has submitted an opening memorial. TCW expects to issue a response very soon. The lawyers said they expect a decision on jurisdiction to be made by the end of the year. A hearing was held to sign the terms of reference in the case involving the concession agreement and the parties are negotiating a procedural schedule. TCW expects the jurisdictional phase to start in early 2010.

¶11. (U) EDE Este and TCW expressed concern to Econoffs over statements made by the GODR lawyer during an ICC hearing in January regarding intentions of the GODR to nationalize EDE Este. EDE Este wrote a letter to President Fernandez noting

their concern over these remarks and asking for clarification. EDE Este also printed the letter in a full page ad in local newspapers. In response, CDEEE Executive Vice President Radhames Segura commented in a radio interview that the GODR had no intention of nationalizing EDE Este. Marinas Fernandez said that EDE Este has not had any direct dialogue with the GODR due to the ongoing litigation, however EDE Este managers have confirmed media reports that Segura requested a meeting with EDE Este along with several electricity generators and the World Bank on February 19.

Comment

¶12. (SBU) The recent news of a bond issue to pay generators and plans to enforce the electricity theft law mark promising steps toward addressing the most pressing impediments in the country's electricity sector. Nonetheless, neither initiative has been concretely established. Having already approved the bond issue, it is unlikely that the Congress, which is controlled by President Fernandez' Dominican Liberation Party, would suddenly refuse to add this critical amendment, but a protracted delay due to consideration of the proposed constitutional reform could cause the MOU to expire. The electricity law implementation demands more skepticism. After repeated delays and rhetoric without action, only criminal prosecutions will demonstrate the GoDR's commitment to combating this abuse. End Comment.

BULLEN